

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
DIEGO VARGAS,
Defendant.

Docket No. 20 CR 708
Chicago, Illinois
March 3, 2022
10:30 a.m.

TRANSCRIPT OF PROCEEDINGS - Sentencing
BEFORE THE HONORABLE ELAINE E. BUCKLO

APPEARANCES:

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1 (Proceedings had in open court:)

00:05 2 THE CLERK: Calling Case No. 20 CR 708-1, USA versus
00:05 3 Diego Vargas.

00:05 4 MR. LEONARD: Do you want us to stand up here, Judge,
00:05 5 or do you want us to --

00:05 6 THE COURT: You could stand.

00:05 7 MR. LEONARD: Okay. Mr. Vargas?

00:05 8 THE COURT: If you people are vaccinated -- which I
00:05 9 think everybody is supposed to be -- if you want to, you
00:05 10 certainly can take off your masks.

00:05 11 MR. LEONARD: Okay, good. Thank you, Judge.

00:05 12 THE COURT: It's your choice. I will too.

00:06 13 Okay. Well, we're here for sentencing. I don't
00:06 14 think that anybody wanted any changes; did they?

00:06 15 MR. JONAS: No, Judge, the government has one
00:06 16 correction to the PSR.

00:06 17 THE COURT: All right. I missed that. What is it?

00:06 18 MR. JONAS: No, you didn't miss it, Judge. I forgot
00:06 19 to include it in my sentencing memo. Paragraph 2 on Page 4.

00:06 20 THE COURT: Uh-huh.

00:06 21 MR. JONAS: Roman Numeral II says that the plea
00:06 22 agreement is a cooperation plea agreement. It's not.

00:06 23 THE COURT: Okay.

00:06 24 MR. JONAS: That was the only correction.

00:06 25 THE COURT: So just take out the whole paragraph?

00:06 1 MR. JONAS: Yes, please.

00:06 2 MR. LEONARD: And we just have two issues. We raised
00:06 3 some non-substantive issues, I don't think need to be changed,
00:06 4 on Page 3 of our response to the PSR, Judge. The only one that
00:07 5 I think might be necessary for a change is Paragraph 85. It is
00:07 6 our position strongly that Mr. Vargas needs alcohol and drug
00:07 7 assistance, and I think that indicates that.

00:07 8 THE COURT: Which paragraph?

00:07 9 MR. LEONARD: Paragraph 85 on Page 25.

00:07 10 THE COURT: Oh, okay. Yeah, I agree.

00:07 11 MR. LEONARD: Okay. And then one other thing. I
00:07 12 just want -- my own correction to my own submission. I think I
00:07 13 had indicated that Mr. Vargas' serious medical incident was a
00:07 14 heart-attack-like event, but it actually was a pulmonary
00:07 15 embolism, a blood clot, which is consistent with being in
00:07 16 confined conditions. So I just want to bring that to the
00:08 17 court's attention. That's not a PSR change.

00:08 18 THE COURT: How did he get that?

00:08 19 MR. LEONARD: I'm sorry? I had mentioned it at
00:08 20 page --

00:08 21 THE COURT: Yes, now that you're saying it, I --

00:08 22 MR. LEONARD: What's that?

00:08 23 THE COURT: Okay. When was that?

00:08 24 MR. LEONARD: This was in June of 2021.

00:08 25 THE COURT: So did he have COVID at the time?

00:08 1 MR. LEONARD: No. He had a pulmonary embolism. He
00:08 2 was taken to Northwestern.

00:08 3 THE COURT: Right. I mean, people get them. They're
00:08 4 terribly serious.

00:08 5 MR. LEONARD: Yeah. It wasn't because of COVID.
00:08 6 Yeah, they thought it was like a near-death type of situation.
00:08 7 But he passed out, he was laying there on the ground blue, they
00:08 8 picked him up. They didn't know -- they think they thought it
00:08 9 was drug related, so they were kind of being harsh with his
00:08 10 body and dropped him a couple times. But it was a pretty
00:08 11 serious event.

00:08 12 THE COURT: But they got rid of the blood clot?

00:08 13 MR. LEONARD: Yeah, they gave him thinners for three
00:08 14 or four months. So far he hasn't had any more, so that's good.

00:09 15 THE COURT: Well, he shouldn't, I guess, have more.

00:09 16 Okay. Well, I'll listen to what the government has
00:09 17 to say. I mean, the guidelines here in some ways considering,
00:09 18 I mean, I don't know, he probably maybe could have been charged
00:09 19 in a harsher way, I don't know. But the offense level is 17,
00:09 20 Criminal History Category of 2. The guidelines really make no
00:09 21 difference because there is a minimum sentence of 60 months,
00:09 22 and you're not asking -- Well, I mean, I don't know that you
00:09 23 can, I mean, since the guidelines were -- well, you could, I
00:09 24 guess, but the guidelines are considerably below that. So,
00:09 25 actually, it looks like 60 months is probably it, minimum, and

00:09 1 that's all you're asking for. And since it's considerably
00:09 2 above the guidelines, I'm not sure that there's an awful lot to
00:10 3 talk about. But please go ahead.

00:10 4 MR. JONAS: Judge, there's not. We are asking for
00:10 5 the 60 months. I have a video of the crime in which he was
00:10 6 convicted of before your Honor. It's about 15 seconds. I know
00:10 7 Mr. -- if I play it, Mr. Leonard wants to play another video
00:10 8 that's also a couple of minutes. We're happy to play it. I
00:10 9 think it just helps your Honor understand the crime in which he
00:10 10 has pled guilty to, if you want.

00:10 11 THE COURT: I don't know that I need to. It
00:10 12 obviously was serious. I assume this was during that -- one of
00:10 13 the two periods of unrest, which doesn't, to me, excuse it at
00:10 14 all. So fortunately I guess nothing was hurt and no one was
00:10 15 hurt. But it sure could have been otherwise.

00:10 16 MR. JONAS: Yes, Judge. If you remember, in addition
00:10 17 to the crime that he has pled guilty to, which occurred in
00:10 18 Naperville during the riots, he threw -- it wasn't --
00:10 19 Mr. Leonard describes it as an M-80. I don't think it was an
00:11 20 M-80. It was a firework designed to go into a tube and then be
00:11 21 shot into the air and explode.

00:11 22 So there were two explosions in the restaurant. One
00:11 23 was the one that's designed to shoot in the air, not quite as
00:11 24 big, and then the one that would go off in the air, which was a
00:11 25 much bigger explosion in the restaurant. Fortunately, no one

00:11 1 was hurt. I don't believe anyone was in the restaurant at the
00:11 2 time. The actual physical damage isn't as much as you would
00:11 3 expect. There was some to the restaurant, but not that much.

00:11 4 There is also a stipulated offense when the night
00:11 5 before, in Aurora, when he was part of a crowd that -- a
00:11 6 spontaneous crowd --

00:11 7 THE COURT: The ATM.

00:11 8 MR. JONAS: -- that attacked an ATM. There's videos
00:11 9 of that. I have it, it's longer. I don't know if your Honor
00:11 10 needs to see it. The crowd did a pretty nice job beating up
00:11 11 the ATM. The defendant was all in on that. In fact, he helped
00:11 12 break up a board, like a wooden sign with planks, and he took
00:11 13 the planks to -- the two-by-fours to help continue beating up
00:11 14 the ATM.

00:12 15 The restitution that we have submitted are both for
00:12 16 the damage to the restaurant and for the damage to the ATM.
00:12 17 There are other people who have been charged as part of the,
00:12 18 I'll call, the ATM crime, so the restitution is joint and
00:12 19 severable. I have those videos. Again, if you want to see it,
00:12 20 Judge, I can play it. If not, it's fine.

00:12 21 THE COURT: There's not really any contest here on
00:12 22 the sentence. I don't really see any need to. I don't
00:12 23 personally care to re-visit all of that as long as -- in that
00:12 24 way if we don't need to.

00:12 25 MR. JONAS: That's fine, Judge.

00:12 1 MR. LEONARD: That's fine with me, Judge.

00:12 2 THE COURT: Okay.

00:12 3 MR. LEONARD: Because what I was going to -- if
00:12 4 Mr. Jonas was going to play it, which I don't think is
00:12 5 necessary, I just wanted to play the part that was consistent
00:12 6 with what I talked about in my submission where he was talking
00:12 7 about how he was originally with all the student leaders,
00:12 8 unfortunately with a bottle of alcohol, and was with them a
00:12 9 long time, and then, unfortunately, gets very intoxicated. But
00:12 10 I don't think we need to see that to understand that that's
00:12 11 true.

00:12 12 THE COURT: Okay.

00:12 13 MR. JONAS: Judge, in terms of argument, I'll rest on
00:12 14 my submission.

00:13 15 THE COURT: Okay.

00:13 16 MR. LEONARD: I'll rest, Judge. And I think you had
00:13 17 made the comment that it's not harsh enough. And the reason
00:13 18 why I think five is more than -- greatly more than enough is
00:13 19 there's two cases in this building, the US vs. Fagundo, 21 CR
00:13 20 195, where a defendant went out, bought fireworks, bought
00:13 21 lighter fluid, planned to blow up a CPD police car, and did
00:13 22 light it on fire. And that person got, pursuant to the
00:13 23 agreement with the government, a below mandatory minimum
00:13 24 sentence of three months probation from Judge Gettleman. And I
00:13 25 think that conduct is no worse than this. And that's an

00:13 1 awfully different sentence.

00:13 2 And then there is another case, US vs. O'Donnell, in
00:13 3 this building, 20 CR 260, pending before Judge Wood where
00:13 4 similarly the US Attorney's office agreed to let the defendant
00:13 5 in that case plead below the mandatory minimum of five years,
00:13 6 just like that other case. And that's very similar, too, where
00:13 7 an individual admitted to attempting to light a Chicago police
00:14 8 fire -- light a Chicago police vehicle on fire.

00:14 9 So I think five here in this case is excessive. But
00:14 10 in terms of disparities, I just want to bring those to your
00:14 11 attention. I know that there is a mandatory minimum that he
00:14 12 has pled to, so that's the issue.

00:14 13 THE COURT: Okay. Well, I don't know who the
00:14 14 judge -- Oh, you said Judge Wood?

00:14 15 MR. LEONARD: Judge Wood in the second, Judge
00:14 16 Gettlerman in the first, yeah.

00:14 17 THE COURT: Judge Gettlerman in the first one? Don't
00:14 18 have an explanation, other than I know they're suburbanites.
00:14 19 I'm not, so.

00:14 20 I don't know, it seems to me that there is no
00:14 21 justification for that kind of civil unrest where you're
00:14 22 torching things, and all, and -- well, I guess that actually
00:14 23 was out in Naperville, it wasn't here, but it's -- you can't
00:14 24 have a civilized society if you have that kind of thing. The
00:15 25 repercussions from all of that are still going on, you just

00:15 1 have to walk outside. So I guess -- I think it's very serious.
00:15 2 I understand protests, I don't -- but not destruction.

00:15 3 Okay. Did you have anymore you wanted to say?

00:15 4 MR. LEONARD: No, Judge, that's it, and of course --

00:15 5 THE COURT: Okay.

00:15 6 MR. LEONARD: -- his probably imminent departure to
00:15 7 Mexico because of the case.

00:15 8 THE COURT: Well, there is that as well, okay.

00:15 9 Mr. Vargas, do you want to say anything?

00:15 10 THE DEFENDANT: Yes. Thank you. I just want to
00:15 11 thank you guys for giving me the opportunity to speak. I just
00:15 12 want to say that I'm sorry. And not only did I embarrass my
00:15 13 community, but my family and me as well. And while I've been
00:16 14 incarcerated, I had time to reflect on my actions, and I know
00:16 15 what I did was wrong. I just want to say I'm sorry.

00:16 16 THE COURT: Okay.

00:16 17 THE DEFENDANT: Thank you.

00:16 18 THE COURT: Well, I mean, that is the other side of
00:16 19 it is we're always talking about individuals, and I'm -- in
00:16 20 some way, I mean, I'm sorry especially that you're going to end
00:16 21 up probably getting deported. And I guess it's one of those
00:16 22 things. You know, you act in a moment, and you're not
00:16 23 thinking, and you're sorry later. It's just that, at some
00:16 24 point, part of being an adult, while you're young, you are an
00:16 25 adult -- or were an adult at that time -- is getting enough

00:16 1 control over our actions that we don't do really bad or
00:16 2 destructive things in an impulse.

00:16 3 Okay. The nature and circumstances of the offense, I
00:16 4 think I've already talked about it enough. Your history and
00:17 5 characteristics. You know, this isn't the only time you've had
00:17 6 problems. On the other hand, I'm sure that you are a nice
00:17 7 young man, and I think that the repercussions, apart from
00:17 8 mandatory minimum prison, being deported are going to be --
00:17 9 they are, in that sense, they are harsh for, you know, a couple
00:17 10 of days in time.

00:17 11 But I need for the sentence to reflect the
00:17 12 seriousness of the offense and promote respect for the law, and
00:17 13 provide just punishment, and afford adequate deterrence to
00:17 14 criminal conduct which -- and protect the public from any
00:18 15 further crimes by you. I'd like to think that it could get you
00:18 16 some education and vocational training, I don't know if that
00:18 17 will happen, but try to get you some medical help with the drug
00:18 18 addiction.

00:18 19 So I must impose a sentence that's sufficient but not
00:18 20 greater than necessary. I think we really, as I said, I --
00:18 21 there is this five-year mandatory minimum. And when you tell
00:18 22 me about sentences that others have given, you know, I don't
00:18 23 know what those circumstances were, but that's what the
00:18 24 sentence is. And so I will sentence you to 60 months in the
00:18 25 Bureau of Prisons.

00:18 1 Since you will be -- I don't know if we need to put
00:19 2 any conditions of supervised release on.

00:19 3 MR. JONAS: Judge, I know that probation recommended
00:19 4 no supervised release, and I assume it's because the
00:19 5 expectation of --

00:19 6 THE COURT: That would be the reason.

00:19 7 MR. JONAS: -- him going into ICE custody.

00:19 8 My position, and I'll defer to your Honor on this, is
00:19 9 I'm always concerned that he may slip through the cracks and
00:19 10 Homeland Security would not pick him up. In which case, I'd
00:19 11 like to seek conditions of supervised release. But I
00:19 12 understand the reason why not to do that. I'll defer to your
00:19 13 Honor on that.

00:19 14 THE COURT: Well, I guess I won't impose them.

00:19 15 There is restitution. I don't know how you're going
00:19 16 to be able to enforce that. But there is restitution of
00:19 17 \$12,346.75 to be paid jointly and severally with whoever else
00:20 18 was I guess convicted of the same.

00:20 19 MR. JONAS: Right, Judge. So 1,500 is on the
00:20 20 defendant alone for the damage to the Egg Harbor Restaurant.
00:20 21 10,846 would be joint and severable for the damage to the ATM
00:20 22 with the other defendants. One defendant in that case was
00:20 23 convicted at trial last June. The other defendant was a hung
00:20 24 jury. He's being re-tried in a week and a half.

00:20 25 THE COURT: Okay.

00:20 1 MR. JONAS: But I think the full amount needs to be
00:20 2 imposed by the court against the defendant. And if other
00:20 3 defendants, again, are able to pay some restitution, that would
00:20 4 ultimately lessen the amount the defendant has to pay.

00:20 5 THE COURT: All right. So \$1,500, is that what you
00:20 6 said?

00:20 7 MR. JONAS: \$1,500 for the damage to the Egg Harbor
00:20 8 Restaurant. And \$10,846 for the damage to the ATM.

00:20 9 THE COURT: Okay. That's the way we will phrase it.

00:20 10 THE CLERK: Judge, just one note. I have not
00:20 11 received the restitution Excel.

00:21 12 MR. JONAS: I attached it to -- I believe I attached
00:21 13 it to the government's version. But if I hadn't, I apologize.
00:21 14 I am handing it to the court now.

00:21 15 THE COURT: Maybe it was.

00:21 16 No, not -- well, not as it was printed out for me.
00:21 17 It's possible that -- I'm not sure Rose always prints the
00:21 18 attachments, so it might not have. But, all right, we've got
00:21 19 it now.

00:21 20 Okay. There is also \$100 special assessment that I
00:21 21 must impose. I think that's all.

00:21 22 You have 14 days to file a notice of appeal.

00:21 23 I will make a recommendation that you receive drug
00:21 24 and alcohol treatment, and if -- I don't know, I can recommend
00:21 25 a place, if you want me to.

00:21 1 MR. LEONARD: Yes, Judge, we would ask that you make
00:21 2 a recommendation for Oxford, Wisconsin.

00:21 3 THE COURT: I'll do that.

00:21 4 MR. LEONARD: Okay. We appreciate that.

00:21 5 THE COURT: Okay. You're young. You really had a
00:21 6 terrible setback. I hope that -- you know, you've got many
00:22 7 years to come. And I do hope very much that you are able to
00:22 8 find a place in society that will be good for you and for
00:22 9 everyone else. So good luck, thank you.

00:22 10 MR. JONAS: Your Honor, one thing. I don't know if
00:22 11 this would be before your Honor or before Judge Kennelly, but
00:22 12 we would move to dismiss 20 CR 331 against the defendant. That
00:22 13 is the other case that was a stipulated offense.

00:22 14 THE COURT: Yeah. Can I do that?

00:22 15 THE CLERK: No, Judge. If it's assigned to Judge
00:22 16 Kennelly, it should be --

00:22 17 MR. JONAS: That's Judge Kennelly? Okay. We will
00:22 18 make the motion before Judge Kennelly, then.

00:22 19 THE COURT: Okay. We will do that.

00:22 20 MR. LEONARD: Thank you, Judge.

00:22 21 MR. JONAS: Thank you, Judge.

00:22 22 THE COURT: Okay. Thank you.

23 (Which were all the proceedings heard.)

24

25

CERTIFICATE

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/ SANDRA M. TENNIS

April 18, 2022

SANDRA M. TENNIS, CSR, RMR, FCRR
Official Court Reporter